IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2430 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUPRABHAT SAHKARI BANK LTD

Versus

STAR POLYFIBRE INDUSTRIES

Appearance:

1. Special Civil Application No. 2430 of 2001

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

MR MB GANDHI for Respondent No. 1-2,4

MRS TRUSHA M GANDHI for Respondent No. 1-4

SERVED BY AFFIX.-(R) for Respondent No. 3

RULE SERVED BY DS for Respondent No. 5-6

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 18/09/2002

ORAL JUDGEMENT

1. The present petition is preferred by the petitioner challenging the order of the Gujarat State Coop. Tribunal so far as it relates to direction No.3 of the operative portion of the order, whereby the Tribunal has observed that the plaintiff bank shall recover the due amount only from defendant No.1 firm and there is no personal liability of the partners of the defendant firm.

2. I have heard Mr.Nanavati, learned Counsel for the petitioner and Mr.Gandhi, learned Counsel appearing for the respondents.

3. Mr.Nanavati has submitted that as per the law, if any loan is taken by the partnership firm and decree or award if passed, the same can also be executed from the personal property of the partners, since the partnership firm has no legal entity and the partners of the firm are personally liable for any transaction entered into by the firm and, therefore, he has submitted that the matter deserves to be allowed.

4. Mr.Gandhi has submitted on behalf of the respondents that the petitioner bank has gone into liquidation and, therefore, the bank without there being any proper authority cannot prefer the present petition. Mr.Gandhi submitted that it is only the liquidator, who has to prefer the petition and the cause title of the petition does not show that the petition is preferred by the liquidator. He also submitted that even if the aforesaid contention is not accepted, the bank is required to proceed for execution of award from the property, which is mortgaged with the bank and thereafter only the partners can be made personally liable. He submitted that until the mortgaged properties are exhausted for the purpose of execution of decree or award, the personal properties of the partners cannot be made available for the purpose of execution of the decree or award.

5. Upon enquiry, Mr.Nanavati has submitted that since the GSFC has exercised power under Section 29 of the State Financial Corporation Act, the property of the partnership firm is under the control of GSFC and, therefore, until the dues of GSFC are realised, it is not possible for the petitioner at this stage to take steps for realisation of the money by way of execution through the sale of the mortgaged property.

6. The first contention raised by Mr.Gandhi

regarding the filing of the petition by liquidator only is even otherwise not supported by the record, because the perusal of the record shows that the vakalatnama is signed by the liquidator and the affidavit is signed by the Manager of the bank and, therefore, it cannot be said that the present petition is not properly preferred on behalf of the petitioner because even if the liquidator is appointed, the employees including the manager of the institution will continue to operate the regular activities of the bank or society. When the liquidator himself signs the vakalatnama, he enjoys all the power of the management committee and, therefore, it cannot be said that the petition is not properly preferred or is without any authority on behalf of the petitioner. On the question of law, it is clear that the partners are personally liable for any transaction of the partnership firm and when the Tribunal, while allowing the appeal, found that the partnership is liable, there is hardly any reason for the Tribunal to observe that there is no personal liability to any partner of the defendant firm. The law on the said aspect is clear and no further discussion is required. There is absolutely no justification in absolving the partners from their personal liabilities by the Tribunal once it is established that they were partners, even if all have not signed the deed while taking loan and, therefore, in my view the operative portion of the judgement of the Tribunal vide direction No.3 cannot be sustained in law. In view of the aforesaid discussion, the petition succeeds. The judgement and order of the Tribunal vide direction No.3 is quashed and set aside and rest of the judgement and order of the Tribunal shall continue to operate. Further it is clarified that the petitioner Bank shall first make an attempt to see that the securities which are mortgaged with the Bank is realised. However, if on account of any unavoidable circumstances it is not possible for the Bank to realise such securities, the same would not operate as a bar in recovery from the personal properties of the partners of the firm. The petition is allowed to the aforesaid extent. There shall be no order as to costs. Rule is made absolute accordingly.

18-9-2002 (Jayant Patel, J.)

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